



March 22, 2018

Re: Testimony in support of SB 1085, and recommending amendments

Dear co-chairs and members of the Judiciary Committee:

My name is Karen O'Keefe, and I am the director of state policies at the Marijuana Policy Project, the largest marijuana policy reform organization in the United States. MPP has been working to improve marijuana policy for more than 20 years. MPP is also the convening organization of the Connecticut Coalition to Regulate Marijuana, a diverse group of organizations that acknowledge that cannabis prohibition has failed and are working to support a better solution — regulating and taxing cannabis similarly to alcohol.¹

I am here today in support of SB 1085, which is one of a package of bills that would legalize, tax, and regulate cannabis for adults 21 or older in Connecticut. SB 1085 focuses on the criminal law revisions to allow adult cannabis use.

I. MPP urges the committee to improve and then pass SB 1085.

As the subsequent parts of my testimony explain in more detail, cannabis is much safer than alcohol, and cannabis prohibition has been a costly and destructive failure. Adult-use legalization, regulation, and taxation is the much more sensible approach, which allows for important public health and safety regulations that are not possible in the unregulated, illicit market. We strongly support Connecticut taking this approach.

Beginning on July 1, 2019, SB 1085 would stop penalizing adults for possession of up to 1.5 ounces of cannabis, including up to five grams of concentrates, if the cannabis was purchased from retail stores. Cannabis would have to be secured from unauthorized access and minors, and clean air restrictions that apply to tobacco would apply to cannabis smoking. Finally, SB 1085 would also allow individuals to apply to erase past convictions for possession of up to 1.5 ounces of cannabis without paying a fee.

While this bill is a significant improvement over the status quo, we urge the committee to consider the following revisions:

A. SB 1085 should allow the secure home cultivation of a limited number of plants, and the possession of the cannabis produced from those plants at the grow location.

Nine of the 10 states that have legalized marijuana allow adults to cultivate cannabis for personal use.² The remaining one — Washington — allows medical cannabis patients to do so. Connecticut and every other state allows home brewing of beer, and it is only consistent to also allow home cultivation of cannabis.

Home cultivation is particularly important to those who use cannabis medicinally, most of whom do not enroll in medical cannabis programs. Due to serious gaps in healthcare, many low-income patients often do not even have a primary care physician; they often get healthcare from clinics and ERs. Others who have a PCP do not have one who is willing to sign a medical cannabis certification. Many others have conditions that do not qualify under Connecticut's very restrictive law. Home cultivation of cannabis is the only means of access some

¹ A note on terminology: marijuana is the term more often used to refer to the cannabis plant. The terms are used interchangeably throughout this document.

² However, in one of the states, Nevada, adults may only cultivate if they live a certain distance from a retailer.

patients can afford, including those who are not able to participate in medical cannabis programs for economic reasons.

B. Cannabis should be allowed regardless of its source.

Unlike every other adult-use law, SB 1085 would only allow cannabis to be possessed if it were obtained from a Connecticut retailer. Until Connecticut retailers are licensed, possession of cannabis would remain illegal even if it were obtained from legal stores in Massachusetts. It would also remain illegal if Connecticut retailers run out of supply for adult-use consumers.

Even once Connecticut retailers are able to meet demand, this provision is alarming. It could subject every adult who is found with cannabis to invasive questioning about its origin and a possible demand for proof that the cannabis was purchased at a retailer. Those who don't know of the law or don't have their receipt could be penalized. This is a waste of law enforcement resources and will lead to unjust detentions and convictions, which tend to disproportionately harm black and Latino residents.

As long as there is enough supply and access to meet demand, Connecticut consumers will want to buy state-legal cannabis. This provision is unnecessary and will lead to injustices.

C. The bill should include a numerical limit for THC in cannabis products.

SB 1085 allows adults to possess 1.5 ounces of cannabis, five grams of which may be cannabis concentrates. Concentrates are defined as "any form of concentration, including, but not limited to, extracts, oils, tinctures and waxes, that is extracted from cannabis and that contains cannabinoids."

To provide clarity to both consumers and law enforcement, we recommend limiting concentrates to waxes, oils, and other extracts containing 40% or more THC. The bill should include a separate limit for all other cannabis products, based on their THC content. To be on par with 1.5 ounces, this would be 1,200 milligrams of THC.

Importantly, providing for a separate, THC-based limit for infused products would ensure that neither the five-gram concentrate limit nor the 1.5 ounce cannabis limit is interpreted as including the weight of other ingredients in cannabis products, such as topical salves and edibles. Such an interpretation could essentially function as a de facto prohibition on these beneficial products, which would simply drive the supply underground or consumers to Massachusetts. Consider: A single Hershey's kiss is 5.7 grams; while a 1.5 ounce limit is half the size of travel-sized bottles.

We recommend having separate limits for concentrates, cannabis, and cannabis products. In other words, consumers should be allowed each 1.5 ounces of cannabis, five grams of concentrates, and cannabis products with up to 1,200 mg of THC. Not everyone is good at math or well versed in the minutiae of laws, and a person shouldn't be criminalized due to an honest mistake.

D. The bill should reduce the penalty for double the possession limit to an infraction.

There is no limit for the amount of alcohol a person may possess in Connecticut. To avoid criminalizing those who are not well versed in the particulars of the law, or who simply are bad at math, we recommend reducing the penalty for double the possession limit to an infraction.

We recommend, at least for a first offense, only imposing an infraction for this minor offense. This is particularly important given disparities in arrests, prosecutions, and penalties for cannabis.

E. We recommend allowing additional license types, including delivery, lounges, and microbusinesses.

This issue is primarily an issue for General Law, but license types are referenced in SB 1085. We encourage the committees to include additional types of licenses. Delivery companies are an important option to get into the cannabis industry for those with less financial capital, including those whose communities have been disproportionately harmed by prohibition. Lounges are important to allow tourists and those who cannot consume cannabis at home a place to go. And microbusinesses provide another important opportunity for those without as many resources.

F. The bill should include automatic erasure for conduct that is made legal, whereby the state is responsible for proactively expunging convictions.

We recognize that automatic erasure would be staff-intensive given that cannabis convictions do not always specify the drug involved in a way that is easy to sort by. We are also aware that the judiciary is already struggling with workload. However, regulating and taxing cannabis can bring in hundreds of millions of dollars in revenue, and a portion of that revenue can and should be dedicated to the staff necessary for automatic erasure. A relatively small percent of individuals with past cannabis convictions go through the hoops of expunging their convictions. Those who need the most help, and have the fewest economic opportunities, are the least likely to jump through the hoops.

A past conviction can make it very difficult to get a job, housing, or even advance one's education. It is worth investing cannabis tax revenue in the staff to proactively remove these scarlet letters.

G. Allowing for erasure and re-sentencing for any prior cannabis offenses, which would be granted if the relief would be in the interest of justice in light of legalization and past disparities.

Some of the cannabis convictions that derail lives are for cultivation or distribution, not simple possession. At a time when the state is legalizing and regulating sales, it makes sense to give these individuals a strong opportunity to have their sentences and convictions reconsidered. For any other marijuana sentence or conviction, we urge that the individual be allowed to petition for erasure or — if they are serving time — they be allowed to apply to the existing review board. Then, the court or review board should consider if erasure or resentencing would serve the interests of justice, while considering that cannabis has been legalized and the history of racial disparities in arrests.

Assistance from legal counsel should be provided from funds generated from marijuana taxes.

With those recommended revisions, we will now turn to reasons to pass SB 1085 and its companion bills.

II. Prohibition has clearly failed.

Despite the vast sums spent on hundreds of thousands of marijuana arrests made in the U.S. every year, prohibition hasn't stopped adults or youth from accessing cannabis. Marijuana remains readily available in Connecticut and across the United States. Prior to any state permitting sales to adults, 40% of American high schoolers reported that they had a peer who sold marijuana at school, compared with less than 1% who knew a peer selling alcohol in school.³ This is probably because unlike licensed liquor stores, drug dealers do not check ID. Regulating cannabis would move sales into safe, licensed retail stores where workers check ID, instead of schools. Criminalizing the production and distribution of cannabis only serves to enrich and empower the criminals that control this lucrative market. It does nothing to keep drugs away from young people.

³ Columbia University, National Center on Addiction and Substance Abuse Survey, 2012.

Further, the public recognizes the harm associated with marijuana prohibition. Popular support for legalization has increased significantly over time. Nationwide, an October 2018 Gallup poll found that 66% support making cannabis use legal for adults, up from 60% in 2016, 48% in 2008, and 36% in 2005. Meanwhile, a 2017 poll conducted by the Sacred Heart University and GreatBlue Research found that 71% of Connecticut residents support legalizing cannabis for adults and taxing it to help address the state's budget crisis.⁴

This is not about being “pro-marijuana.” Marijuana is a drug, as is alcohol, and it can be abused, like alcohol. This is about being anti-prohibition, because the prohibition of marijuana creates far more harm to individuals and society than marijuana consumption itself ever could. Connecticut has a rich history of resisting alcohol prohibition — it was one of two states that never approved the 18th Amendment, which ushered in prohibition. It should use that same wisdom today.

III. A better approach, regulation, has already been forged by other states.

As it became increasingly obvious that prohibition was not working, states have begun to choose a more sensible approach — taxing and regulating cannabis similarly to alcohol. This trend began with Colorado and Washington in 2012, then Alaska and Oregon in 2014, then California, Maine, Massachusetts, and Nevada in 2016, and most recently Michigan in 2018. (Other states are considered likely to follow suit this year, including New Jersey, New York, Rhode Island, and Illinois.)

Connecticut can learn from the nine states that have paved the way. Those states also illustrate the benefits of replacing prohibition with taxation and regulation.

For example, according to Gov. Jay Inslee and Attorney General Bob Ferguson of Washington state:

Our state's efforts to regulate the sale of marijuana are succeeding. A few years ago, the illegal trafficking of marijuana lined the pockets of criminals everywhere. Now, in our state, illegal trafficking activity is being displaced by a closely regulated marijuana industry that pays hundreds of millions of dollars in taxes. This frees up significant law enforcement resources to protect our communities in other, more pressing ways.⁵

Former Gov. John Hickenlooper of Colorado — who strongly opposed to the 2012 initiative that legalized marijuana in his state — has said that, while implementation was challenging, it was “also one of the things I’m most proud of.”⁶ He also said that, from a “35,000-foot level,” things in Colorado have gone well, citing things like the fact that health officials have not seen increased teen use or a dramatic increase in overall consumption and that polls show residents are increasingly in favor of continued legalization.⁷

As one example of where Connecticut can learn from other states, some concerns were raised about edibles not being clearly marked under initial regulations. In response, Colorado developed additional rules related to edible products.⁸ These made edibles easier to distinguish from non-infused foods, and made it easier for consumers to determine how much THC they were consuming.⁹ If SB 1085 and companion bill HB 7371 pass, the Cannabis

⁴ See <https://www.wtnh.com/news/politics/poll-finds-majority-of-connecticut-residents-support-marijuana-legalization/1097524713>

⁵ Feb. 15, 2017 Letter from Gov. Inslee and AG Ferguson to U.S. Attorney General Jeff Sessions, *available at* <https://www.documentcloud.org/documents/3474339-Gov-AG-Ltr-to-Sessions-Re-Marijuana-002.html>.

⁶ Alicia Wallace, “Colorado gov’s weed advice for California: Focus on edibles, home grows, pesticides,” *The Cannabist*, *The Denver Post*, Feb. 14, 2017, *available at* <http://www.thecannabist.co/2017/02/14/colorado-marijuana-advice-california-governor-john-hickenlooper/73656/>.

⁷ *Id.*

⁸ The complete rules are available here: https://www.colorado.gov/pacific/sites/default/files/1CCR212-1_Retail.pdf

⁹ They did so by requiring each serving of the edible marijuana product (including baked goods), which may contain a maximum of 10mg of active THC, to be “marked, stamped, or otherwise imprinted with the Universal Symbol,” which contains the “!” and letters “THC” (Rule 604 C5-5). If it is a liquid, powder, or other product that cannot be stamped or

Control Commission, within the Department of Consumer Protection, would develop comprehensive rules regarding packaging and labeling from the very beginning. These requirements include that cannabis products' labels must include; the length of time it typically takes for a cannabis product to take effect, the amount of cannabis the cannabis product is equivalent to, a nutritional fact panel on the cannabis product, and disclosing ingredients and possible allergens of the cannabis product. Additionally, it requires that edible products be clearly identifiable, when practicable, with a standard symbol indicating that the product contains cannabis, and that cannabis products are to be packaged in opaque, child-resistant packaging with a warning that it should be kept away from children.

Pursuant to companion bill HB 7371, all cannabis would be sold with warnings, including regarding impaired driving, the need to keep cannabis away from minors and pets, and warnings about possible risks such as cannabis use disorder, risks specific to younger adults with developing minds, those specific to pregnancy and breastfeeding, and any risks of exacerbating psychosis

As a result of other states leading the way by regulating marijuana, we also know more about the economic impacts. Washington state, for example, which has about double the population of Connecticut, collected more than \$434 million in adult-use cannabis tax revenue in 2018, and Colorado has issued over 40,000 active licenses to individuals to work directly in the cannabis industry. Adjusted to Connecticut's population, that would be \$210 million in revenue and more than 20,000 licensed cannabis employees.

Unsurprisingly, the vast majority of marijuana sales have shifted to the legal market. By early 2016, *The Economist* reported that Colorado officials believe 70% of the estimated demand for marijuana in Colorado is being met by the regulated market, with the rest primarily being met through the gray market (*i.e.* marijuana grown legally at home by adults or licensed medical marijuana caregivers).¹⁰ With the change in the Colorado medical marijuana program that dramatically reduces the amount of cannabis that can be grown in homes, even more sales will be moving into the legal market.¹¹

IV. Legalizing adult-use marijuana will improve public safety and help reduce racial disparities in arrests and prosecution.

Unfortunately, while white and black Connecticut residents consume cannabis at similar rates, the same cannot be said of the rate at which they are arrested. Prior to decriminalization, black Connecticut residents were arrested or cited for marijuana possession 3.3 times more often than were white Connecticut residents despite similar usage rates.¹² There is no reason to think the disparity has disappeared when it comes to citations or those who possess more than the half ounce covered by decriminalization.

Unfortunately, the racially disparate impact is hardly surprising upon examination of the beginning of marijuana prohibition in the United States in 1937. Rather than being a thoughtful, evidence-based policy, early arguments in favor of prohibition were based on unscientific and blatantly racist claims. For example, Henry Anslinger, the architect of prohibition, said: "There are 100,000 total marijuana smokers in the U.S., and most are Negroes, Hispanics, Filipinos, and entertainers. Their satanic music, jazz and swing, result from marijuana use. This

imprinted, each portion containing 10mg of active THC must be in a separate childproof container. (Rule 604 C5-6). In addition, the manufacturer "must ensure that each single Standardized Serving Of Marijuana of a Multiple-Serving Edible Retail Marijuana Product is physically demarked in a way that enables a reasonable person to intuitively determine how much of the product constitutes a single serving of active THC." (Rule 604 C5-9a). For example, the manufacturer could make a chocolate bar that was breakable into single serving squares.

¹⁰ "Legalising cannabis: Reefer regulatory challenge," *The Economist*, Feb. 13, 2016.

¹¹ Collen Sikora, "Medical marijuana caregivers face new grow limits in 2017," *News Channel 13*, Dec. 26, 2017. Some patients were given authorization to grow as many as 99 plants. Connecticut's law will allow four or fewer cannabis plants, which is on the low end of what is allowed in other states.

¹² ACLU of Connecticut, *The War on Marijuana in Black and White*, available at <https://www.aclu.org/report/report-war-marijuana-black-and-white>.

marijuana causes white women to seek sexual relations with Negroes, entertainers, and any others.”¹³ He also warned that cannabis “lead to pacifism and communist brainwashing.”

The way marijuana prohibition is enforced erodes trust between police and minority communities at a time when such trust is sorely lacking. As Washington, D.C.’s former police chief bluntly put it: “All these [marijuana] arrests do is make people hate us.” In addition to being valuable in itself, positive police/community relationships improve public safety. A Department of Justice study found that trusting relationships with the local community was one of the most important factors in whether police were effective in solving violent crimes.¹⁴

Ending prohibition will help police solve violent crimes in another way — by freeing up time and resources currently wasted in prosecuting adults for low-level cannabis offenses. Ending prohibition will allow these resources to be redirected to solving crimes that victimize others.

Finally, ending prohibition will improve public safety by removing this lucrative business from criminal gangs. As with alcohol prohibition in the 1920s, since drug-related disputes can’t be solved lawfully, violence is inevitable. As a result, cannabis users and sellers face dangers due to prohibition. That is not a reason decriminalization is bad — it’s an argument for legalization and regulation. The demand for cannabis was there before Connecticut decriminalized it, and it’s there now. Allowing legal businesses to meet that demand will eliminate the vast majority of the criminal market’s sales and improve public safety.

V. Connecticut should move forward this year, before it becomes an island of prohibition.

There is no good reason to continue with a destructive and wasteful policy of prohibition that tears families apart, deprives the state of revenue, and wastes law enforcement time. Instead, Connecticut should act now to replace prohibition with adult-use legalization and sensible regulation.

Massachusetts, Maine, and Vermont have already legalized marijuana for adults, and sales began in Massachusetts in November. Most Connecticut residents are a relatively short drive from legal, regulated cannabis stores. The New Jersey, New York, and Rhode Island legislatures seem likely to follow suit this year.

Connecticut polls consistently show voters would legalize and regulate cannabis if they had the power to do so. But only the legislature has that authority in Connecticut. Connecticut should treat adults like grown-ups, and let them make their own decisions — with appropriate health warnings. And it should begin to reap the economic benefits of moving from prohibition to regulation and taxation.

VI. Much of the opposition to this reform is based on myths and misconceptions about marijuana

I would like to address two of the most prevalent myths and misconceptions associated with reducing or eliminating penalties for adult marijuana possession. First, some people worry that marijuana is a so-called “gateway” to the use of harder drugs. This concern has been debunked by every major study on the subject. For example, in a seminal 1999 report by the prestigious Institute of Medicine (IOM), part of the National Academy of Sciences, researchers found “marijuana is not the most common, and is rarely the first, ‘gateway’ to illicit drug use. There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs.”¹⁵ The report went on to note, “There is no evidence that marijuana serves as a stepping stone on the basis of its particular physiological effect. ... Instead, the legal status of marijuana makes it a gateway drug.”¹⁶ These findings have been confirmed by major peer-reviewed studies in

¹³ See Nick Wing, “Marijuana Prohibition was racist from the start. Not much has changed,” *The Huffington Post*, Nov. 14, 2014, at http://www.huffingtonpost.com/2014/01/14/marijuana-prohibition-racist_n_4590190.html.

¹⁴ See “Getting Away with Murder,” *The Economist*, July 4, 2015.

¹⁵ “Marijuana and Medicine: Assessing the Science Base,” Institute of Medicine (1999), p. 6. Available at http://www.nap.edu/openbook.php?record_id=6376.

¹⁶ *Id.* at 99.

Remainder of this testimony is
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